



(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.

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(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

#### Rule 41 FRCP

Prior to the removal of this matter to the United States District Court, the Defendant City of Charleston filed an Answer to the Plaintiffs' Complaint in state court (attached as **Exhibit A**). Additionally, all Defendants have filed dispositive motions seeking dismissal of the Plaintiffs' Complaint (See ECF-4, ECF-10, ECF-13 and ECF-15). In response to the Defendants' motion(s), the Court granted leave and directed the Plaintiffs to file an appropriate Amended Complaint correcting the pleading defect(s) and/or a response to the Defendants' motion(s) on or before November 1, 2021. (See ECF-7) The Plaintiffs, rather than complying with the Court's

directive, instead filed a defective Notice of Voluntary Dismissal<sup>1</sup> and cited to Rule 41(a) FRCP as the basis for the same. (See ECF-17).

Pursuant to Rule 41(a) FRCP, a Plaintiff may not voluntarily dismiss its action without a court order after service of an answer or motion for summary judgment, unless a stipulation of dismissal is signed by all parties. Rule 41(a)(2) FRCP provides that “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the Plaintiff’s request only by court order, on terms that the Court considers proper. See Rule 41 FRCP.

In the instant case, because the Defendant City of Charleston filed an Answer, and all parties filed dispositive motions, the Plaintiffs may not voluntarily dismiss their claims without a stipulation of dismissal signed by all parties or a court order directing the same. The Defendants made the Plaintiffs of this defect, their proper objections relative to the same, and advised that the Defendants will consent to a dismissal with prejudice (along with a related withdrawal of the appeal filed in state court prior to removal of this action). The Plaintiffs have declined this proposal and have filed neither an Amended Complaint nor any response to the various dispositive motions filed by each of the Defendants who have appeared in this action.

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<sup>1</sup> Prior to the removal of this action, the Plaintiffs filed an appeal regarding the circuit court’s denial of the Plaintiffs’ Motion for Temporary Injunction and Restraining Order regarding the subject matter of the instant litigation; the appeal was filed prior to removal. Upon information and belief, the Plaintiffs have not yet notified the South Carolina Court of Appeals of (1) this case’s removal to the United States District Court, and (2) their improper attempt to file a voluntary dismissal without prejudice. Accordingly, the appeal remains open, and the Defendants are left in a position in which they may need to continue to expend additional litigation time and resources to a case which, at least under its current posture, has not been properly dismissed.

Accordingly, the Defendants respectfully ask the Court to reject the Plaintiffs' defective notice of voluntary dismissal based on the Plaintiffs' failure to comply with Rule 41 FRCP, the prejudicial nature of the circumstances of a dismissal without prejudice applied to the facts of this matter, and direct that a dismissal, with prejudice, is proper under the particular circumstances of this case.

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